

AMENDED IN SENATE MAY 10, 2011
AMENDED IN SENATE APRIL 12, 2011
AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 469

Introduced by Senator Vargas

February 17, 2011

An act to amend Section 65950 of, and to add Section 65957.3 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 469, as amended, Vargas. Land use: development project review: superstores.

(1) The Permit Streamlining Act requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within ~~6 months from the date of certification of an environmental impact report or within 3 months~~ 60 days from the date of adoption of a negative declaration or the determination by the lead agency that the project is exempt from the California Environmental Quality Act, unless the project proponent requests an extension of time.

This bill would, in addition, require a city, county, or city and county, including a charter city, prior to approving or disapproving a proposed development project that would permit the construction of a superstore retailer, as defined, to cause an economic impact report to be prepared, as specified, to be paid for by the project applicant, and that includes specified assessments and projections including, among other things, an assessment of the effect that the construction and operation of the proposed superstore retailer will have on retail operations and

employment in the same market area. The bill would also require the governing body to provide an opportunity for public comment on the economic impact report. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The bill would also require the lead agency to approve or disapprove the project within 180 days from the date of certification of an environmental impact report and approval of an economic impact report, or within 60 days from the date of adoption of a negative declaration and approval of an economic impact report or the determination by the lead agency that the project is exempt from the California Environmental Quality Act and approval of an economic impact report.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to promote
- 2 economic development in all communities of the state and to
- 3 address the impact on the state’s small businesses from the
- 4 superstore retail model. Therefore, the Legislature finds and
- 5 declares all of the following:
- 6 (a) It is in the interest of local governments to promote economic
- 7 development in their jurisdictions.
- 8 (b) Land use decisions are frequently linked to fiscal policy
- 9 because local governments receive a share of sales tax revenues
- 10 generated within their borders. California cities thus often seek
- 11 large sales tax revenue sources, such as superstores, without taking
- 12 into account all of the external economic effects that superstores
- 13 bring to communities.
- 14 (c) Transformations in the big box retail industry have altered
- 15 retail business nationwide. The engine of this change is the retail
- 16 format known as the superstore—a big box retail store that also
- 17 contains the equivalent of a full-size grocery store, with the total

1 floor space often three to four times as large as that of a
2 conventional supermarket.

3 (d) As a result of the restructuring of retail business, particularly
4 the grocery sector in California, the following effects may be seen:
5 local grocers, who yield a greater community return on investment,
6 are driven out of business; less community access to viable
7 superstore alternatives; lower wages and benefits paid to grocery
8 workers by superstore retailers; and a host of complex land use,
9 traffic, and fiscal impacts.

10 (e) Superstores typically combine a large variety of discount
11 general merchandise with full service grocery sales to the general
12 public under one roof, thereby generating more intense land use
13 and environmental impacts than other large-scale retailers and
14 wholesale membership clubs.

15 (f) Industry and academic studies indicate superstores rarely
16 add any retail services not currently provided within a community,
17 and the majority of sales growth at a superstore comes from a
18 direct shift of dollars from existing retailers within a community,
19 primarily from grocery stores.

20 (g) Land use decisions regarding superstores fall to city and
21 county governments, even if the impacts will be regional as well
22 as local.

23 (h) Currently, local governments that desire to perform due
24 diligence for their constituents by performing an economic analysis
25 are placed at a disadvantage because a neighboring city or county
26 may not perform an economic analysis. This a situation may result
27 in the shifting of sales tax and destruction of the business
28 community in a city or county that simply wants to study the
29 impacts of the development project before making a final approval.

30 *SEC. 2. Section 65950 of the Government Code is amended to*
31 *read:*

32 65950. (a) Any public agency that is the lead agency for a
33 development project shall approve or disapprove the project within
34 whichever of the following periods is applicable:

35 (1) One hundred eighty days from the date of certification by
36 the lead agency of the environmental impact report if an
37 environmental impact report is prepared pursuant to Section 21100
38 or 21151 of the Public Resources Code, *and approval of any*
39 *economic impact report required pursuant to Section 65957.3,* for
40 the development project.

1 (2) Ninety days from the date of certification by the lead agency
2 of the environmental impact report if an environmental impact
3 report is prepared pursuant to Section 21100 or 21151 of the Public
4 Resources Code for the development project and all of the
5 following conditions are met:

6 (A) At least 49 percent of the units in the development project
7 are affordable to very low or low-income households, as defined
8 by Sections 50105 and 50079.5 of the Health and Safety Code,
9 respectively. Rents for the lower income units shall be set at an
10 affordable rent, as that term is defined in Section 50053 of the
11 Health and Safety Code, for at least 30 years. Owner-occupied
12 units shall be available at an affordable housing cost, as that term
13 is defined in Section 50052.5 of the Health and Safety Code.

14 (B) Prior to the application being deemed complete for the
15 development project pursuant to Article 3 (commencing with
16 Section 65940), the lead agency received written notice from the
17 project applicant that an application has been made or will be made
18 for an allocation or commitment of financing, tax credits, bond
19 authority, or other financial assistance from a public agency or
20 federal agency, and the notice specifies the financial assistance
21 that has been applied for or will be applied for and the deadline
22 for application for that assistance, the requirement that one of the
23 approvals of the development project by the lead agency is a
24 prerequisite to the application for or approval of the application
25 for financial assistance, and that the financial assistance is
26 necessary for the project to be affordable as required pursuant to
27 subparagraph (A).

28 (C) There is confirmation that the application has been made
29 to the public agency or federal agency prior to certification of the
30 environmental impact report.

31 (3) Sixty days from the date of adoption by the lead agency of
32 the negative declaration if a negative declaration is completed and
33 adopted, *and approval of any economic impact report required*
34 *pursuant to Section 65957.3*, for the development project.

35 (4) Sixty days from the determination by the lead agency that
36 the project is exempt from the California Environmental Quality
37 Act (Division 13 (commencing with Section 21000) of the Public
38 Resources Code), *and approval of any economic impact report*
39 *required pursuant to Section 65957.3*, if the project is exempt from
40 the California Environmental Quality Act.

1 (b) This section does not preclude a project applicant and a
2 public agency from mutually agreeing in writing to an extension
3 of any time limit provided by this section pursuant to Section
4 65957.

5 (c) For purposes of paragraph (2) of subdivision (a),
6 “development project“ means a use consisting of either of the
7 following:

8 (1) Residential units only.

9 (2) Mixed-use developments consisting of residential and
10 nonresidential uses in which the nonresidential uses are less than
11 50 percent of the total square footage of the development and are
12 limited to neighborhood commercial uses and to the first floor of
13 buildings that are two or more stories. As used in this paragraph,
14 “neighborhood commercial” means small-scale general or specialty
15 stores that furnish goods and services primarily to residents of the
16 neighborhood.

17 (d) For purposes of this section, “lead agency” and “negative
18 declaration” shall have the same meaning as those terms have in
19 Sections 21067 and 21064 of the Public Resources Code,
20 respectively.

21 ~~SEC. 2.~~

22 *SEC. 3.* Section 65957.3 is added to the Government Code, to
23 read:

24 65957.3. (a) As used in this section, “superstore” means a
25 business establishment that exceeds 90,000 square feet of gross
26 floor area, sells a wide range of consumer goods, and devotes 10
27 percent of the sales floor area to the sale of items that are exempted
28 from the Sales and Use Tax Law pursuant to Section 6359 of the
29 Revenue and Taxation Code. “Superstore” shall include retail
30 establishments with multiple tenants, and the cumulative sum of
31 related or successive permits that may be part of a larger project,
32 including piecemeal additions to a building, so long as consumer
33 goods and nontaxable items are sold under the same roof with
34 shared checkout stands, entrances, and exits. This definition
35 excludes discount warehouses and discount retail stores that sell
36 more than half of their items in large quantities or bulk, and also
37 require shoppers to pay a membership or assessment fee.

38 (b) As used in this section, the term “market area” has the same
39 meaning as that term is defined in Section 53084.

1 (c) Prior to approving or disapproving a permit for the
2 construction or conversion of a superstore retailer, a city, county,
3 or city and county shall cause to be prepared an economic impact
4 report.

5 (1) The city, county, or city and county may prepare the
6 economic impact report or contract with a private entity, other than
7 the permit applicant, or with another public agency for the
8 preparation of the report. The private entity or other public agency
9 shall be qualified by education, training, and experience to conduct
10 economic and fiscal impact analyses.

11 (2) The applicant for the development project shall pay the city,
12 county, or city and county for the costs of preparing the economic
13 impact report.

14 (3) The economic impact report shall include, but is not limited
15 to, all of the following:

16 (A) An assessment of the extent to which the proposed
17 superstore retailer will capture a share of retail sales in the market
18 area.

19 (B) An assessment of how the construction and operation of the
20 proposed superstore will affect the supply and demand for retail
21 space in the market area.

22 (C) An assessment of how the construction and operation of the
23 proposed superstore will affect employment in the market area,
24 including all of the following:

25 (i) The number of persons employed in existing retail stores in
26 the market area.

27 (ii) An estimate of the number of people who will likely be
28 employed by the proposed superstore.

29 (iii) An analysis of whether the proposed superstore will result
30 in a net increase or decrease in employment in the market area.

31 (iv) The effect on wages and benefits of employees of other
32 retail businesses, and community income levels in the market area.

33 (D) A projection of the costs of public services and public
34 facilities resulting from the construction and operation of the
35 proposed superstore retailer and the incidence of those costs.

36 (E) A projection of the public revenues resulting from the
37 construction and operation of the proposed superstore retailer and
38 the incidence of those revenues.

39 (F) An assessment of the effect that the construction and
40 operation of the proposed superstore retailer will have on retail

1 operations, including grocery or retail shopping centers, in the
2 same market area, including the potential for blight resulting from
3 retail business closures and the nature of any businesses displaced.

4 (G) An assessment of the effect that the construction and
5 operation of the proposed superstore will have on the ability of
6 the city, county, or city and county to implement the goals
7 contained in its general plan, including, but not limited to, local
8 policies and standards that apply to land use patterns, traffic
9 circulation, affordable housing, natural resources, including water
10 supplies, open-space lands, noise problems, and safety risks.

11 (H) An assessment of the effect that the construction and
12 operation of the proposed superstore will have on average total
13 vehicle miles traveled by retail customers in the same market area.

14 (I) An assessment of the potential for long-term vacancy of the
15 property on which the superstore is proposed in the event that the
16 business vacates the premises, including any restrictions that exist
17 on the subsequent use of the property on which the superstore is
18 proposed to be located, including the provisions of any lease that,
19 in the event the owner or operator of the superstore vacates the
20 premises, would require the premises to remain vacant for a
21 significant amount of time.

22 (J) An assessment of whether the superstore would require the
23 demolition of housing or any other action or change that would
24 result in a decrease or negative impact on the creation of extremely
25 low, very low, low-, or moderate-income housing.

26 (K) An assessment of whether the superstore would result in
27 the destruction or demolition of park or other green space,
28 playgrounds, child care facilities, or community centers.

29 (L) An assessment of whether the superstore would result in
30 any other adverse or positive economic impacts or blight.

31 (M) An assessment of whether any measures are available that
32 may mitigate any materially adverse economic impacts identified
33 by the applicant.

34 (d) This section shall not preclude a city, county, or city and
35 county from conducting additional studies of the effects of the
36 construction and operation of a proposed superstore retailer.

37 (e) At any regularly scheduled meeting or meetings of the city,
38 county, or city and county governing body, after the completion
39 *and approval* of the economic impact report required by
40 subdivision (b), and 30 days prior to the issuance of any

1 entitlement, including, but not limited to, a building permit, a city,
2 county, or city and county shall provide the opportunity for public
3 comment on the economic impact report and its findings.

4 (f) (1) The Legislature finds that the construction and operation
5 of a superstore retailer has land use, environmental, economic,
6 fiscal, and social equity effects that extend beyond the boundaries
7 of the city, county, or city and county in which it is located.

8 (2) The Legislature finds that it is essential for the statewide
9 public health, safety, and welfare to require cities, counties, and
10 cities and counties to understand the potential spillover effects of
11 approving the construction and operation of superstore retailers.

12 (3) The Legislature further finds and declares that the review
13 and regulation of superstore retailers is a matter of statewide
14 concern and not merely a municipal affair, as that term is used in
15 Section 5 of Article XI of the California Constitution. Therefore,
16 this section shall apply to charter cities and to charter cities and
17 counties.

18 ~~SEC. 3.~~

19 *SEC. 4.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 a local agency or school district has the authority to levy service
22 charges, fees, or assessments sufficient to pay for the program or
23 level of service mandated by this act, within the meaning of Section
24 17556 of the Government Code.